

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BERDINO JOE ARTHUR,

Plaintiff,

vs.

No. CV 16-00843 MCA/LF

STATE OF NEW MEXICO, COUNTY
OF SAN JUAN, IN THE 11TH JUDICIAL
DISTRICT, NEW MEXICO DEPARTMENT
OF CORRECTION,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court *sua sponte* under 28 U.S.C. § 1915(e)(2)(B) and Fed. R. Civ. P. 12(b)(6) on the Prisoner's Civil Rights Complaint ("Complaint") filed by Plaintiff Berdino Joe Arthur on July 22, 2016 (Doc. 1). The Court will dismiss Arthur's Complaint for failure to state a claim on which relief can be granted.

I. Standards for Failure to State a Claim

Plaintiff Arthur is proceeding pro se and *in forma pauperis*. The Court has the discretion to dismiss an *in forma pauperis* complaint *sua sponte* for failure to state a claim upon which relief may be granted under either Fed. R. Civ. P. 12(b)(6) or 28 U.S.C. § 1915(e)(2)(B). Under Fed. R. Civ. P. 12(b)(6) the Court must accept all well-pled factual allegations, but not conclusory, unsupported allegations, and may not consider matters outside the pleading. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Dunn v. White*, 880 F.2d 1188, 1190 (10th Cir. 1989). The court may dismiss a complaint under rule 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged." *Hall v. Bellmon*,

935 F.2d 1106, 1109 (10th Cir. 1991) (quoting *McKinney v. Oklahoma Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). A plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. A claim should be dismissed where it is legally or factually insufficient to state a plausible claim for relief. *Id.*

Under § 1915(e)(2)(B) the court may dismiss the complaint at any time if the court determines the action fails to state a claim for relief or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(ii). The authority granted by § 1915 permits the court the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). *See also Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir.1991). The authority to “pierce the veil of the complaint's factual allegations” means that a court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations. *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). The court is not required to accept the truth of the plaintiff's allegations but, instead, may go beyond the pleadings and consider any other materials filed by the parties, as well as court proceedings subject to judicial notice. *Denton*, 504 U.S. at 32-33.

In reviewing a pro se complaint, the Court liberally construes the factual allegations. *See Northington v. Jackson*, 973 F.2d at 1520-21. However, a pro se plaintiff's pleadings are judged by the same legal standards that apply to all litigants and a pro se plaintiff must abide by the applicable rules of court. *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994). The court is not obligated to craft legal theories for the plaintiff or to supply factual allegations to support the plaintiff's claims. Nor may the court assume the role of advocate for the pro se litigant. *Hall v. Bellmon*, 935 F.2d at 1110.

In deciding whether to dismiss the complaint, in whole or in part, the court is to consider whether to allow plaintiff an opportunity to amend the complaint. Pro se plaintiffs should be given a reasonable opportunity to remedy defects in their pleadings. *Reynoldson v. Shillinger*, 907 F.2d 124, 126 (10th Cir. 1990). The opportunity to amend should be granted unless amendment would be futile. *Hall v. Bellmon*, 935 F.2d at 1109. An amendment is futile if the amended claims would also be subject to immediate dismissal under the rule 12(b)(6) or § 1915(e)(2)(B) standards. *Bradley v. Val-Mejias*, 379 F.3d 892, 901 (10th Cir. 2004).

II. Arthur's Complaint Fails to State a Claim

Arthur names the “State of New Mexico, County of San Juan, in the 11th Judicial District” as a defendant. Although it is not entirely clear, Arthur appears to be trying to assert claims against the New Mexico Eleventh Judicial District Court. Arthur also alleges claims against the “New Mexico Department of Correction.” Arthur’s allegations against the Eleventh Judicial District Court and the New Mexico Department of Corrections fail to state a claim for several reasons.

First, the Eleventh Judicial District Court and the New Mexico Department of Corrections are agencies of the State of New Mexico. The State is not a “person” within the meaning of 42 U.S.C. § 1983 and, therefore, there is no remedy against the State under § 1983. Therefore, the claims against the Eleventh Judicial District and the New Mexico Department of Corrections fail to state any claim for relief. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 63-64 (1989).

Second, to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must assert acts by government officials acting under color of law that result in a deprivation of rights secured by the United States Constitution. 42 U.S.C. § 1983; *West v. Atkins*, 487 U.S. 42, 48 (1988). There must

be a connection between official conduct and violation of a constitutional right. Conduct that is not connected to a constitutional violation is not actionable under Section 1983. *See Trask v. Franco*, 446 F.3d 1036, 1046 (10th Cir. 1998). Plaintiff may not proceed solely on a theory of vicarious liability. A plaintiff must plead that each government official, through the official's own individual actions, has violated the Constitution. *Ashcroft v. Iqbal*, 556 U.S. 662, 676, 129 S.Ct. 1937, 1948 (2009).

Plaintiff must allege some personal involvement by an identified official in the alleged constitutional violation to succeed under § 1983. *Fogarty v. Gallegos*, 523 F.3d 1147, 1162 (10th Cir. 2008). In a Section 1983 action, it is particularly important that a plaintiff's complaint "make clear exactly *who* is alleged to have done *what to whom*, to provide each individual with fair notice as to the basis of the claim against him or her." *Robbins v. Oklahoma*, 519 F.3d 1242, 1249-50 (10th Cir. 2008) (emphasis in the original). Arthur's Complaint refers to "defendant" and "they" but does not identify any individual or specify any individual conduct that violated his constitutional rights. (Doc. 1 at 1-3, 9-10). Arthur's Complaint fails to state a plausible § 1983 claim for relief against either the Eleventh Judicial District Court or the New Mexico Department of Corrections. *Twombly*, 550 U.S. at 570.

Third, in a supplemental filing, Arthur seeks to allege claims against the District Attorney and District Judge who prosecuted and sentenced him. Civil rights claims against officers acting as judges or prosecutors are clearly barred by absolute judicial immunity. *See Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978); *Christensen v. Ward*, 916 F.2d 1462, 1473-76 (10th Cir. 1990); *Hunnicut v. Sewell*, 147 N.M. 272, 277-78, 219 P.3d 529, 534-45 (Ct. App. 2009). It is well settled that the doctrine of judicial immunity is applicable in actions, such as the case at bar, with 42 U.S.C. § 1983 claims as well as state law claims. *Van Sickle v. Holloway*, 791 F.2d 1431,

1434–35 (10th Cir.1986); *Collins on Behalf of Collins v. Tabet*, 111 N.M. 391, 396, 806 P.2d 40, 45 (1991). Absolute immunity bars all suits for money damages for acts made in the exercise of judicial discretion. *Guttman v. Khalsa*, 446 F.3d 1027, 1033 (10th Cir.2006).

The United States Supreme Court has recognized absolute immunity for officials whose special functions or constitutional status requires complete protection from suit. *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982). The purpose of absolute judicial immunity is:

“to benefit the public, ‘whose interest is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.’ The Supreme Court has recognized that ‘the loser in one forum will frequently seek another, charging the participants in the first with unconstitutional animus.’ Therefore, absolute immunity is necessary so that judges can perform their functions without harassment or intimidation.”

Van Sickle v. Holloway, 791 F.2d at 1434–35.

Like judges, prosecutors are entitled to immunity in the performance of their prosecutorial functions. *Miller v. Spiers*, 434 F.Supp.2d 1064 (2006); *Johnson v. Lally*, 118 N.M. 795, 796, 887 P.2d 1262, 1263 (Ct. App. 1994). The common law has long recognized prosecutors must be given immunity from the chilling effects of civil liability. *Burns v. Reed*, 500 U.S. 478, 485, 111 S.Ct. 1934, 114 L.Ed.2d 547 (1991); *Griffith v. Slinkard*, 146 Ind. 117, 44 N.E. 1001, 1002 (1896); *Collins*, 111 N.M. at 396, 806 P.2d at 45. Prosecutors are absolutely immune from damages for their advocacy and activities “intimately associated with the judicial phase of the criminal process.” *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976).

Arthur seeks to recover damages against the unnamed District Judge and District Attorney for acts that were unquestionably made in the exercise of judicial and prosecutorial discretion. Any claims against the District Judge and the District Attorney are barred by immunity and, even if Arthur had actually named them as defendants, his claims would be barred.

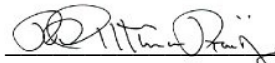
Last, even if Arthur did identify an individual and specify individual conduct against defendants that are not immune, his Complaint still fails to state a claim under the *Heck* doctrine. In *Heck v. Humphry*, 512 U.S. 477, 487 (1994), the Supreme Court addressed the question of when a prisoner may bring a § 1983 claim relating to his conviction or sentence. The Court held that when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed. *Heck*, 512 U.S. at 487. Similarly, although in some circumstances a prospective injunction may be available under § 1983, to the extent a request for declaratory or injunctive relief would necessarily invalidate the prisoner's conviction or sentence, declaratory and injunctive relief are also barred by the *Heck* doctrine. *Wilkinson v. Dotson*, 544 U.S. 74, 80-81 (2005). *See also Edwards v. Balisok*, 520 U.S. 641 (1997).

Arthur's request for relief specifically asks the Court to dismiss all state criminal charges, release him, and award him damages for wrongful sentencing. (Doc. 1 at 5). Arthur's requests for relief clearly necessitate the invalidation of his sentence. Because a favorable ruling on Arthur's claims would require treating his sentence in Eleventh Judicial District cause no. D-1116-CR-200800611 as invalid, the civil rights claims in the Complaint must be dismissed under the *Heck* doctrine. *See, Beck v. City of Muskogee Police Dept.*, 195 F.3d 553, 556-57 (10th Cir.1999).

The Court will dismiss Arthur's Complaint without leave to amend because the Court determines that amendment of the Complaint would be futile. *Hall v. Bellmon*, 935 F.2d at 1109. In light of the relief he seeks, any amendment Arthur might make would still necessarily imply the invalidity of his state-court conviction and sentence and would still be barred under *Heck*.

Amendment would be futile because the amended claims would also be subject to immediate dismissal under the rule 12(b)(6) or § 1915(e)(2)(B) standards. *Bradley v. Val-Mejias*, 379 F.3d at 901.

IT IS ORDERED that the Prisoner's Civil Rights Complaint ("Complaint") filed by Plaintiff Berdino Joe Arthur on July 22, 2016 (Doc. 1) is **DISMISSED** for failure to state a claim on which relief can be granted and judgment will be entered.



UNITED STATES DISTRICT JUDGE